IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1221 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHISH BAGRODIA

Versus

STATE OF GUJARAT

Appearance:

[MR AKSHAY H MEHTA for Petitioners

Mr. H.L. Jani, APP for Respondent No. 1 & 3.

MR YATIN SONI for Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 07/03/2001

ORAL JUDGEMENT

Heard learned Advocate Mr.Akshay Mehta for the petitioners.

1. Rule. Learned A.P.P. Mr. H.L. Jani waives service of rule on behalf of the respondents nos.1 and 3 while learned Advocate Mr.. Yatin Soni who has appeared in response to notice issued vide earlier order on behalf of the respondent no.2 has waived the service of rule for the respondent no.2.

2. The petitioners have prayed to quash and set aside the First Information Report registered vide CR no.I 307/2000 at Fatehganj Police Station on the First Information given by the respondent no.2 against the present petitioners for the offence made punishable under Secs.379, 406 r.w.s.114 IPC.

2. The petitioners nos.1 and 2 are the Advisor and Executive Director of a Company known as G.S.L.(India) Ltd.(hereinafter referred to as the Company) which is registered as a Private Limited Company under the provisions of the Companies Act, 1956. The respondent no.2 alongwith his father Kartarsing Bindra is the owner of Bunglow no.12 situated at Punitnagar, Chanakya Marg, Fatehganj, Baroda.

3. That on 7-10-2000, the petitioner no.2 has given an application to PI, Fatehganj Police Station, Baroda inter alia stating the facts that the property consisting of Bunglow no.12, Punitnagar, Chanakya Marg, was let to the Company since 13-9-1997. That a lease agreement for the monthly rent of Rs.10,000/- for the use and occupation of the said Bungalow was entered into with the Company. Furthermore, another agreement for use of furnitures and fixtures lying in the said Bungalow was entered into between the parties for monthly rent of Rs.7500/-. Over and above that parties have also entered into an agreement for service and maintenance charges at the rate of Rs.7500/-per month. That according to the terms and conditions agreed between the parties, additions and alteration in the property as well as the furnitures, fixtures etc. was to be carried out by the Company at its cost on permission of the owner and all such additions and alteration were to remain a part of the property of the owner on termination of the agreement. That the Company had agreed to pay damages for any damage caused to the property during use and occupation of the premises and/or Company was required to carry out the repair works to the satisfaction of the owner. It is alleged in the application that the informant came to know that the watchman and other workers of the Company had removed the grills from the window and have also taken away steel and wooden

cupboards entrusted to the Company for use under the agreement. Not only that, they have caused damage to the electric fittings etc.. That thereby, he visited the Bungalow in the month of September and found that many of the electrical fittings as well as bathroom fittings and furniture was removed from the property and cheap fittings were replaced in the bathrooms. That he tried to contact the Managing Director on telephone but he was not available. That subsequently, the Executive Director-K.C. Basir visited the premises and assured the informant that all furnitures and fittings which are missing would be supplied and/or replaced to the satisfaction of the owner, and thereby, no steps were taken against the Company. However, the informant received a letter dated 4-10-2000 intimating the fact that owner should take the possession of the Bungalow on or about 7-10-2000, otherwise security person placed on the bungalow would be removed and the Company would not be responsible thereafter. On such basis the informant requested the Police Officer to carry out a Panchnama of the premises so as to record missing articles and existing furnitures, fittings etc in the bunglow on the basis of which owner could take appropriate steps. That copy of lease and other agreements entered into between the parties were also supplied to the police authority. A list of furnitures, fixtures provided in the bungalow was also given to the police authority with the application. The informant has further alleged that Company has not paid the rent since July/August of that year, and as such, he has to recover the amount of rent.

That Incharge of Fatehganj Police Station registered the said application as FIR no.307/2000 against the present petitioners which is challenged by the petitioners in the present proceedings.

4. Initially, vide order dated 22-11-2000, urgent show cause notice was issued and interim relief as prayed vide paragraph 18(C) was granted. That the respondent no.2 has appeared in response to the notice and has filed affidavit-in-reply.

5. It has been submitted at the Bar on behalf of the petitioner that the Company has carried out additions and alteration in the property with the permission of the owner and has incurred huge amount to provide various amenities and facilities. That the owner was intimated that account shall be settled and replacement of articles of furnitures, fixtures etc. would be replaced on finalization of the same. It has been submitted on behalf of the petitioner that owner was asked to take the

possession and settle the dispute about the alleged missing articles etc., however, instead of taking possession of the premises has filed a complaint which does not disclose the offence as alleged therein. That the dispute between the parties is purely of a civil nature and as per the agreement the parties have agreed to resolve the dispute through arbitration. That the petitioners are ready and willing to negotiate the settlement provided the respondent no.2 withdraws the complaint against the petitioners who are the high ranking officers of the Company.

6. It would be pertinent to note at this stage that pending the petition, the parties negotiated the settlement at the suggestion of the Court and the terms and conditions agreed are reduced into writing which is taken on record. The respondent no.2 has agreed to withdraw the complaint made against the petitioners if the amount agreed in the settlement is paid to the respondent no.2.

7. That in the matter of MADHAVRAO JIWAJI RAO SCINDIA AND ANR. ETC. VS SAMBHAJIRAO CHANDROJIRAN ANGRE AND OTHERS ETC. reported vide AIR 1988 SC 709, the Apex Court has made the following observation vide paragraph (7):

"The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilized for any oblique purpose and where in the opinion of the Court chances of ultimate conviction are bleak no useful purpose is likely to be served by allowing the criminal prosecution to continue, the Court may while taking into consideration the special facts of the also quash the proceedings even though it may be at a preliminary stage."

8. That in the instant case, bare perusal of the First Information Report, copy of which is produced at Annexure "E" clearly disclose that uncontroverted version even if accepted at its face value do not disclose any offence against the petitioners as alleged therein. That at the most it discloses a dispute between the parties which is purely of civil nature. The special feature of the fact is that the respondent no.2 alongwith his father

by express agreement of leave and licence and other two agreements have granted permission to use the furnitures, fixtures and articles etc. to the Company and the possession of the property has not been taken by the respondent no.2 or his father officially in due discharge of the agreements. Under such circumstances, missing of articles from the premises cannot amount to offences as alleged in the complaint, and as such, complaint is liable to be quashed and set aside.

Furthermore, as parties have negotiated the settlement as per consent terms and the respondent no.2 has agreed to withdraw the complaint, the ends of justice would be met if the agreement is recorded and parties are directed to comply with the terms and conditions agreed so that entire dispute between the parties even if of a civil nature would come to a happy end.

9. On the basis of foregoing discussion, the following operative orders are passed:

OPERATIVE ORDERS:

(i) The proceedings initiated against the petitioners vide CR No.307/2000 registered at Fatehganj Police Station, Baroda, are hereby quashed and set aside.

(ii) The petitioners through the Company shall pay an aggregate amount of Rs.1,45,000/- agreed by way of settlement to the respondent no.2 in full and final payment of outstanding dues, damages and replacement of furnitures, fixtures etc. given to the Company under the agreements dated 26-11-1997 entered into between the parties. That the said amount shall be payable by installments as agreed in the consent terms dated 7-3-2001 commencing from 15th March, 2001.

(iii) The Investigating Officer, Incharge of investigation of CR No.307/2000 shall return the articles to the respondent no.2 collected pursuant to the said F.I.R.

Rule to that extent is made absolute.

(A.K.Trivedi,J.)

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